



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

December 3, 1999

4WD-PSB

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Yoram Fishman  
3300 Wonder View Plaza  
Los Angeles, California 90068

SUBJ: Agreement for Recovery of Past Response Costs at the  
Sun Laboratories Superfund Site Located in Atlanta,  
Georgia

Dear Mr. Fishman:

The United States Environmental Protection Agency (EPA) hereby notifies you that the thirty-day public comment period required by Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9622(i), regarding the Agreement for Recovery of Past Response Costs (Cost Recovery Agreement), U.S. EPA CERCLA Docket No. 99-39-C, for the Sun Laboratories Superfund Site located in Atlanta, Georgia has expired. EPA did not receive any comments that disclose facts or considerations which indicate that the Cost Recovery Agreement is inappropriate, improper or inadequate. Therefore, EPA has finalized the Cost Recovery Agreement (an executed copy of which is enclosed).

The effective date of the Cost Recovery Agreement is the date of this written notice stating that the public comment period has expired. Pursuant to Section V of the Agreement, payment of \$50,000.00 is due within thirty (30) days of the effective date of the Agreement. Accordingly, please submit payment of \$50,000.00 by January 2, 2000.

Payment shall be made by certified or cashier's check, made payable to "EPA Hazardous Substance Superfund." The check shall reference the name and address of the party making payment, the Site name - Sun Laboratories Superfund Site, the EPA Region and Site Spill ID Number - 04EU, and the EPA docket number for this action, and shall be sent to:



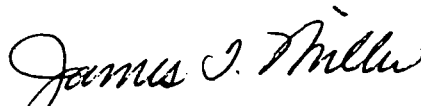
U.S. EPA - Region 4  
Superfund Accounting  
P.O. Box 100142  
Atlanta, Georgia 30384  
Attn: Collection Officer in Superfund

A copy of the check shall simultaneously be sent to Ms.  
Paula V. Batchelor at:

U.S. EPA - Region 4  
CERCLA Program Services Branch  
Waste Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

If you have any questions, please contact Greg Armstrong at  
(404) 562-8872. If you have any legal questions, please contact  
Donzetta Workman, Assistant Regional Counsel, at (404) 562-9549.

Sincerely yours,

  
*for* Franklin E. Hill, Chief  
CERCLA Program Services Branch  
Waste Management Division

Enclosure: Cost Recovery Agreement

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:	)	U.S. EPA CERCLA Docket
	)	No. 99- <del>05</del> -C
	)	39
Sun Laboratories Superfund Site	)	
Atlanta, Fulton County, Georgia	)	
	)	
Yoram Fishman,	)	AGREEMENT FOR RECOVERY OF
Settling Party	)	PAST RESPONSE COSTS
	)	

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 6922(h)(1), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrator of the EPA by EPA Delegation No. 14-14-D, and further delegated to the Chief of Program Services Branch of EPA Region 4, by Regional Delegation No. 14-14-D.

2. This Agreement is made and entered into by EPA and Settling Party. Settling Party agrees to undertake all actions required by this Agreement and further consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

3. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings

to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

## II. BACKGROUND

4. This Agreement concerns the Sun Laboratories Superfund Site (Site). EPA alleges that the Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

5. Nasaro, Inc., a dissolved Georgia corporation, is the current owner of the Site. Nasaro, also known as Sun Laboratories of Atlanta, Inc., (collectively "Nasaro") purchased the Site property in 1981 from Southeastern Packaging Corporation. From approximately 1988 until 1990, Nasaro leased the Site property to Sun Laboratories, Inc. of Atlanta (Sun Labs).

6. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. In performing these response actions, EPA incurred response costs. To date, EPA has incurred an estimated cost of \$820,942.33 for response actions taken at the Site.

7. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) based on his alleged operation of the Sun Labs Facility.

8. EPA and Settling Party desire to resolve Settling Party's alleged civil liability for Past Response Costs without litigation and without the admission or adjudication of any issue of fact or law.

## III. PARTIES BOUND

9. This Agreement shall be binding upon EPA and upon Settling Party and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

f. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and the Settling Party.

h. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA or the U.S. Department of Justice, on behalf of EPA, has incurred or paid at or in connection with the Site. Such costs totaling \$820,942.33, as of September 30, 1998, plus interest.

i. "Section" shall mean a portion of this Agreement identified by a roman numeral.

j. "Settling Party" shall mean Yoram Fishman.

k. "Site" shall mean the Sun Laboratories Superfund Site, located at 701 Wharton Circle in Atlanta, Fulton County, GA. in the Fulton Industrial Park and comprises approximately 3 to 4.5 acres.

l. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

#### V. REIMBURSEMENT OF PAST RESPONSE COSTS

11. Settling Party shall pay a total of fifty thousand dollars (\$50,000), to the EPA Hazardous Substance Superfund for reimbursement of Past Response costs incurred by EPA at the Sun Laboratories Superfund Site. Such payment shall be due and payable within thirty (30) days after the effective date of this Agreement. Payments shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name - Sun Laboratories Superfund Site, the EPA Region and Site/Spill ID Number -04EU, and EPA docket number 99-~~05~~<sup>39</sup>-C for this action, and shall be sent to:

U.S. EPA Region 4  
Attn.: Superfund Accounting  
P.O. Box 100142  
Atlanta, Georgia 30384

12. At the time of payment, Settling Party shall send notice that such payment has been made and a copy of the check to:

Greg Armstrong  
Waste Management Division  
Cost Recovery Program  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8909

#### VI. FAILURE TO COMPLY WITH AGREEMENT

13. In the event that any payment required by Paragraph 11 is not made when due, Settling Party shall pay interest on the unpaid balance through the date of payment at the current rate specified for interest on investments of the Hazardous Substances Superfund established by 26 U.S.C. § 9507, compounded annually on

October 1 of each year, in accordance with 42 U.S. C. § 9607(a).

14. If any amounts due to EPA under Paragraph 11 is not paid by the required date, Settling Party shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$1000 per violation per day that such payment is late.

15. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with Paragraphs 11 and 12.

16. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with any term or condition of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement.

#### VII. COVENANT NOT TO SUE BY EPA

19. In consideration of the payments that will be made by Settling Party under the terms of this Agreement, and except as specifically provided in Section VIII of this Agreement, EPA

covenants not to sue Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Paragraph 11 and Paragraphs 13 and 14. This covenant not to sue is conditioned upon:

a. the satisfactory performance by Settling Party of his obligations under this Agreement.

b. the veracity of the information provided to EPA by Settling Party pertaining to Settling Party's involvement with the Site and its financial condition.

This covenant not to sue extends to both Settling Party and does not extend to any other person.

#### VIII. RESERVATIONS OF RIGHTS BY EPA

20. The covenant not to sue by EPA set forth in Paragraph 19 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all other matters, including but not limited to:

a. liability for failure of Settling Party to meet a requirement of this Agreement;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

21. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.



# IX. COVENANT NOT TO SUE BY SETTLING PARTY

22. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

23. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

# X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

24. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA and Settling Party each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

25. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

26. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days

prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

27. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Paragraph 19.

#### XI. RETENTION OF RECORDS

28. Until 5 years after the effective date of this Agreement, Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

29. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records or documents, and upon request by EPA, Settling Party shall deliver any such records or documents to EPA. Settling Party may assert that certain documents, records, or other information are privilege under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name

and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim or privilege applies only to a portion of a document, the document shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records and documents that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim any such dispute has been resolved in Settling Party's favor.

30. By signing this Agreement, the Settling Party certifies individually that, to the best of its knowledge and belief, it has:

- a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in his possession, which relates in any way to the ownership, operation or control of the site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;
- b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and
- c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122 (e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

## XII. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in

writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Party.

As to EPA:

Donzetta' Workman  
Assistant Regional Counsel  
Environmental Accountability Division  
U.S. EPA, Region 4  
Sam Nunn Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8909

As to Settling Party:

Yoram Fishman  
3300 Wonder View Plaza  
Los Angeles, California 90068

XIII. INTEGRATION

32. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

XIV. PUBLIC COMMENT

33. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XV. ATTORNEY GENERAL APPROVAL

34. Subject to the provisions of Paragraph 33, the Attorney General or her designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

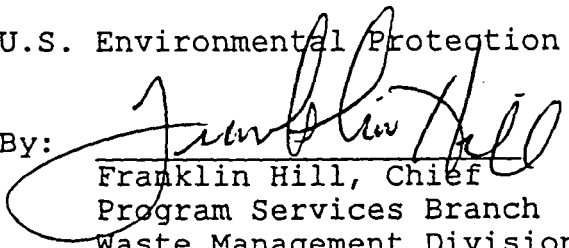
XVI. EFFECTIVE DATE

35. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 33 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:

  
Franklin Hill, Chief  
Program Services Branch  
Waste Management Division

7/21/99  
Date

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of EPA docket number: 99-~~08~~<sup>39</sup>-C, relating to the Sun Laboratories Superfund Site:

Settling Party:

By 

Yoram Fishman

July 11/99  
[Date]